



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,776	04/28/2006	Laszlo Somogyi	289254US0PCT	9585
22850	7590	01/06/2010	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			HAMMER, KATIE L	
			ART UNIT	PAPER NUMBER
			1796	
			NOTIFICATION DATE	DELIVERY MODE
			01/06/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,776	<b>Applicant(s)</b> SOMOGYI ET AL.	
	<b>Examiner</b> KATIE HAMMER	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-12,19,20 and 24-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-12,19,20 and 24-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/28/2009</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This office action is in response to applicant's arguments filed on August 28, 2009. Claims 1-7, 9-12, 19-20, and 24-30 are pending in this application. Claims 1, 4-7, and 9-11 have been amended. Claims 8, 13-18, and 21-23 have been cancelled. Claims 24-30 are newly added.

### ***Response to Arguments***

2. Applicant's arguments, see pages 13-18, filed August 28, 2009, with respect to the rejection(s) of claims 1-12 and 19-20 under Gisler (WO 03/031520) in view of Papa et al. (US 4,248,776); and claims 19 and 20 under Gisler (WO 03/031520) in view of Papa et al. (US 4,248,776), further in view of Berenguer (US RE38,531 E) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made using Lamm et al. (DE 19825202 A1), Ruhlmann et al. (US 5,964,900), and Fennen et al. (US 2004/0025260 A1) as presented below.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

Art Unit: 1796

1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**3.** Claims 1-12 and 19-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16-30 of copending Application No. 11/628,659. Although the conflicting claims are not identical, they are not patentably distinct from each other because App. No. 11/628,659 claims a similar process for dyeing leather comprising applying one anionic polyazo dye F with at least one alkaline-activable group of similar formula A (see claims 16, 21-22 of App. No. 11/628,659), the process where the dye F is at a pH from 3-6.5 and then at least 8 (see claim 26 of App. No. 11/628,659), dyeing by a one-stage process, before retanning, and at a temperature range of 10-60 degrees Celsius (see claims 27-29 of App. No. 11/628,659), per the requirements of instant claims 1-12 and 19-20 of the instant invention.

Although App. No. 11/628,659 claims a similar method, the conflicting claims are not identical because App. No. 11/628,659 requires an anionic polyazo dye F with at least 3 diazo groups and group A where X is a C<sub>1</sub>-C<sub>4</sub> alkyl or alkoxy and the instant claims require one dye F and group A where X is an electron-attracting radical, wherein the instant claims.

Art Unit: 1796

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize such a process for dyeing leather by incorporating any type of dye. Such modification would be obvious because one having ordinary skill in the art would expect such a process to have similar properties to those claimed as the dye composition itself does not distinguish it from the process steps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the active process steps for dyeing the leather, besides just the pH of the dye bath.

As currently claimed, the process only comprises treatment with an aqueous float comprising at least one dye F or a metal complex thereof at a pH of from 8.5 to 11. However, the instant specification examples teach several different pH values used, including acidic pH ranges, throughout the dyeing process and time periods at designated pH levels (see page 72 for the start of the dyeing examples). The Test Report filed on 8/28/2009 further confirms that multiple pH values and multiple method steps are used in the leather dyeing process and thus additional method steps need to

Art Unit: 1796

be present in the instantly claimed method in order to clearly define the scope of the instant claims.

Claim 10 claims that the dyeing occurs at a one stage process, however this is indefinite because there could still be steps before or after the dyeing itself that would cause the process to be multiple stages. Therefore, this claim needs more details with the independent claim method steps.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

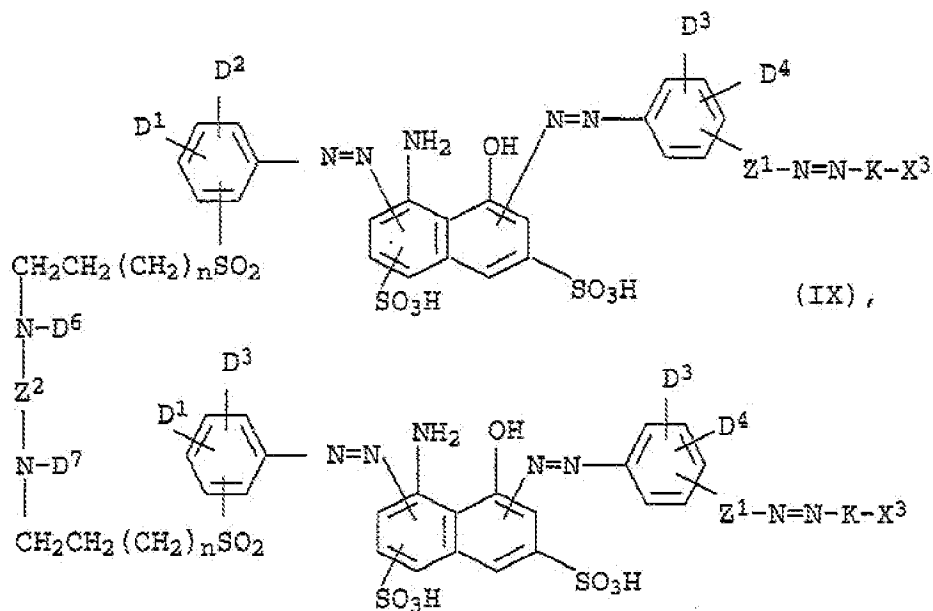
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 4-6, 24-26, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamm et al. (DE 19825202 A1) in view of Fennen et al. (US 2004/0025260 A1). For ease of examination, all references to Lamm et al. are to the English abstract, Derwent Acc-No. 2000-054407.

As to claims 1-2, 4-6, and 30, Lamm et al. teaches a process for dyeing leather, comprising contacting said leather with a float that comprises at least one dye F which has at least one group represented by formula A wherein said at least one dye is selected from the group consisting of general formulae (III) where  $Dk^1$  is a formula of radical A, the  $Napht^1$  is substituted by  $-OH$  and  $-NH_2$ ,  $Kk^1$  is an aromatic radical derived from benzene, naphthalene, pyrazole, pyridine, or others and the  $Dk^2$  is also a radical of

Art Unit: 1796

formula A,  $Tk^1$  and  $Tk^2$  are divalent aromatic radicals of benzene, optionally substituted by  $SO_3H$ , the subscript  $n$  is 0, and the subscript  $k$  is 0, B is a  $CH_2-CH_2-Q$  group (see formula 1 below and Derwent abstract for the group definitions,  $D^1$  and  $D^2$  are both hydrogen, preferred use of the dye formula is for dyeing leather); the process wherein  $k$  in the formula A is zero (see formula I below and Derwent abstract, both  $D^1$  and  $D^2$  are hydrogen); the process wherein at least one radical X in the formula A is an  $SO_3H$  group (see formula I below); the process wherein the group represented by formula A is attached to the dye molecule via a  $-N=N-$  group (see formula 1 below); the process wherein the at least one dye F is an azo dye (see Derwent abstract and formula 1 below); the process wherein  $n=0$  (see formula I below); the process wherein Q is  $R^3S(O)_2$  where  $R^3$  is an alkyl group (see formula 1 below).



Lamm et al. differs from the instant claims by not explicitly teaching that the dyeing float exhibits a pH of from 8.5 to 11.

Art Unit: 1796

However, as to claims 1 and 24-26, Fennen et al. teaches the use of an aqueous alkaline medium with a water-soluble dye for the dyeing of leather at a pH from about 7 to 10, preferably 8 to 9 (see para. 0001, 0006-0009, and 0046).

Therefore, in view of the teaching of Fennen et al., one having ordinary skill in the art at the time the invention was made would be motivated to modify the leather dyeing process taught by Lamm et al. by incorporating the pH range taught by Fennen et al. to arrive at the claimed invention because both references teach the use of azo dyes for the dyeing of leather and Fennen et al. teaches improvements over prior leather dyeing processes by use of aqueous alkaline solutions. Fennen et al. clearly teaches the use of the instantly claimed pH range, and, thus, a person of ordinary skill in the art would be motivated to combine these pH requirements with a reasonable expectation of success for obtaining a dyed leather with high color intensity, outstanding wet fastness, and excellent grain lightness (see Fennen et al. abstract) would expect such a process to have similar properties to those claimed, absent unexpected results.

**6.** Claims 9-12, 19-20, and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamm et al. (DE 19825202 A1) in view of Fennen et al. (US 2004/0025260 A1). For ease of examination, all references to Lamm et al. are to the English abstract, Derwent Acc-No. 2000-054407.

Lamm et al. teaches a process for dyeing leather as described above and the dyed leather product, however fails to teach or disclose initially treating the leather with the aqueous float comprising at least one dye F at a pH in the range from 3 to 6.5, the



Art Unit: 1796

dyeing occurs at a one-stage process, the process wherein the dyeing occurs before retanning, the process wherein the dyeing occurs at 10 to 60 degrees Celsius, the dyed leather used for handwear, footwear, automobiles, apparel or furniture, and the time period of dye contacting the leather.

However, as to claims 9-12, 19-20, and 27, Fennen et al., in analogous art of dyeing leather with azo dyes and metal complexes thereof, teaches the process which further comprises initially treating the leather with the aqueous float comprising at least one dye F at a pH in the range from 3 to 6.5 (see para. 0002, 0005, and 0040); the process wherein the dyeing occurs at a one-stage process (allowing the dye to act on the leather in an aqueous alkaline medium, see para. 0009); the process wherein the dyeing occurs before retanning (see para. 0001); the process wherein the dyeing occurs at temperatures ranging from 10 to 60 degrees Celsius (see para. 0022 and 0046); a dyed leather obtainable by the dyeing process (see para. 0006); the dyed leather for handwear, footwear, automobiles, apparel, or furniture (see para. 0006); the process occurring for a time of from 0.5 to 2 hours (see para. 0046).

Therefore, in view of the teaching of Fennen et al., one having ordinary skill in the art at the time the invention was made would be motivated to modify the leather dyeing process taught by Lamm et al. by incorporating the process conditions and retanning step as taught by Fennen et al. to arrive at the claimed invention because both references teach the use of azo dyes for the dyeing of leather and Fennen et al. teaches improvements over prior leather dyeing processes by use of aqueous alkaline solutions (see para. 0009). Fennen et al. clearly teaches the use of the claimed

Art Unit: 1796

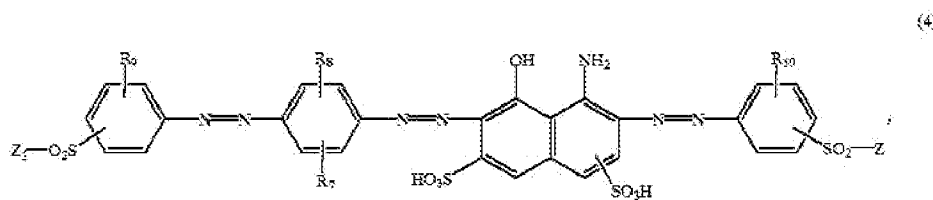
process steps, and, thus, a person of ordinary skill in the art would be motivated to combine these process steps and pH requirements with a reasonable expectation of success for obtaining a dyed leather with high color intensity, outstanding wet fastness, and excellent grain lightness (see Fennen et al. abstract) would expect such a process to have similar properties to those claimed, absent unexpected results.

As to claims 28-29, Fennen et al. teaches the process where said contacting is carried out for four hours (see para. 0046) and that due to the depth of color achieved, no additional fixation step needs to be carried out (see para. 0008), yet makes no mention of the dye fixation percentage as determined by UV/VIS spectroscopy and HPLC. It is elementary that the mere recitation of a newly discovered function or property, that are obviously present in the dyeing method of the prior art does not cause a claim drawn to distinguish over the prior art. Additionally where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an obvious characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on by providing experimental evidence. In re Swinehart, 169 USPQ 226 (CCPA 1971). Therefore, one of ordinary skill in the art at the time the invention was made could have arrived at the instantly claimed dyeing process for leather.

7. Claims 1, 3, and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruhlmann et al. (US 5,964,900) in view of Fennen et al. (US 2004/0025260 A1).

Art Unit: 1796

As to claims 1, 3, and 7, Ruhlmann et al. teaches a process for dyeing leather comprising contacting said leather with a float that comprises at least one dye F which has at least one group represented by formula A, wherein said at least one dye is selected from the general formulae (I) where  $Dk^1$  is a formula of radical A, the Napht<sup>1</sup> is substituted by  $-OH$  and  $-NH_2$ , and one  $-SO_3H$ , subscript  $p=1$ ,  $Kk^1$  is an aromatic radical derived from benzene,  $Dk^2$  is also a radical of formula A, subscript  $m=1$ , B is  $CH_2=CH_2$  group, the subscript  $n=0$ , and the subscript  $k=0$ , B is a  $CH_2-CH_2-Q$  group wherein Q is an alkaline detachable group (reactive dyes of formula (4) suitable for dyeing leather and have excellent stability in the alkaline range, see formula 4 below from col. 5-6 and col. 10, lines 6-49); the process wherein B in the formula A is  $-CH_2CH_2-OSO_3H$  (see col. 3, lines 32-35 definition of  $Z_1$  and formula (4) below); the process wherein n is 0 (see formula 4 below); the process wherein at least one group represented by formula A is (A1) and (A2) (see col. 3, lines 32-35 definition of  $Z_1$ , col. 5-6 and formula (4) shown below); the process wherein the dye F comprises the dye of the general formula (I) or a metal complex thereof (see formula (4) below).



Ruhlmann et al. differs from the instant claims by not explicitly teaching that the dyeing float exhibits a pH of from 8.5 to 11.

Art Unit: 1796

However, Fennen et al. teaches the use of an aqueous alkaline medium with a water-soluble dye for the dyeing of leather at a pH from about 7 to 10, preferably 8 to 9 (see para. 0001, 0006-0009, and 0046).

Therefore, in view of the teaching of Fennen et al., one having ordinary skill in the art at the time the invention was made would be motivated to modify the leather dyeing process taught by Ruhlmann et al. by incorporating the pH range taught by Fennen et al. to arrive at the claimed invention because Ruhlmann et al. suggests that the dyes exhibit high fastness at alkaline conditions (see col. 10, lines 43-49) and Fennen et al. teaches improvements over prior leather dyeing processes by use of aqueous alkaline solutions. Fennen et al. clearly teaches the use of the instantly claimed pH range, and, thus, a person of ordinary skill in the art would be motivated to combine these pH requirements with a reasonable expectation of success for obtaining a dyed leather with high color intensity, outstanding wet fastness, and excellent grain lightness (see Fennen et al. abstract) would expect such a process to have similar properties to those claimed, absent unexpected results.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATIE HAMMER whose telephone number is (571)270-7342. The examiner can normally be reached on Monday to Friday, 10:00am EST to 6:30pm.

Art Unit: 1796

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/  
Supervisory Patent Examiner, Art  
Unit 1796

/KLH/